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Fabien Poulard

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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER

BLIZZARD, CHRISTOPHER JAMES

ART UNIT

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3771

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DELIVERY MODE

10/26/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. This office action is in response to preliminary amendment filed on 8/3/09. As directed by the amendment, claims 1, 2, 4, 5, and 7 were amended, claims 8-11 were added, and claims 3 and 6 were cancelled. Thus, claims 1, 2, 4, 5, and 7-11 are presently pending in this application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 2, 4, 5, 7, and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said expulsion channel" in the ninth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

4. Claim 4 recites the limitation "according to claim 3" in the first line of the claim. There is insufficient antecedent basis for this limitation in the claim.

5. Regarding claim 7, applicant fails to disclose adaptation of pump necessary so that it "dispenses the product in a fine spray that is undetectable by the user."

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 5, and 7-11 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomaka (6,651,844) in view of Rocci (6,138,669).

8. Regarding claims 1, 2, 5, and 7-11, Tomaka discloses a fluid product nasal atomizing and spraying device (10) comprising a pump that operates without piezoelectric, electrostatic spraying mechanisms or propellant gas (column 3, lines 17-18), a spray head (20) (fig. 2) to actuate the pump manually (column 3, lines 27-28), and a dispensing detection means (40) to detect that a product does has been dispensed. The detection means (40), which is connected to electronic means (52) to process the signal, outputs a signal to inform the user that a dose has been dispensed by the pump (column 5, lines 8-12). Tomaka further discloses the pump being connected to a spraying orifice (16a) through an expulsion channel (16) (fig. 2), but does not disclose the detection means being provided in the expulsion channel. Rocci teaches a dose counter for a nasal device (column 3, lines 44-50) with a detection means in the form of a pressure sensor (12) provided in an expulsion channel (7) (fig. 3) and adapted to detect the passage of a product in the expulsion chamber due to a pressure difference at the time that a product dose is sprayed (column 5, lines 118). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the nasal spray device of Tomaka with a detection means provided in an expulsion chamber as taught by Rocci in order to provide the advantage of fewer miscounts, as taught by Rocci (column 2, lines 44-47).

Response to Arguments

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1. Applicant's arguments filed 8/3/09 have been fully considered but they are not persuasive. Applicant's arguments concerning the sensor of Rocci not being operable in the device of Tomaka on the grounds that no pressure burst exist, is not persuasive since in order for a fluid to travel through a passage, such as the passage of Tomaka, a pressure difference must exist therefore the sensor of Rocci would be able to sense the dispensing of medicament in the device of Tomaka.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTOPHER BLIZZARD/

Examiner, Art Unit 3771

/Justine R Yu/

Supervisory Patent Examiner, Art Unit 3771